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7 UNITED STATES BANKRUPTCY COURT
8 NORTHERN DISTRICT OF CALIFORNIA
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10 In re)
11) Bankruptcy Case
12 ARTHUR OLLIVIERRE,) No. 98-35362BDM
13 Debtor.) Chapter 13

14 ORDER DENYING EX PARTE APPLICATION TO
15 ESTABLISH CLAIMS BAR DATE FOR OMITTED CREDITOR

16 Arthur Ollivierre ("Debtor") has filed an application to
17 establish a new claims bar date for a creditor, Homecomings
18 Financial ("Homecomings"). Homecomings had notice of this Chapter
19 13 case; Debtor correctly listed Homecomings on its creditor
20 mailing matrix filed on December 3, 1998. Debtor, however, did
21 not correctly list Homecomings as a secured creditor on his
22 schedules filed on January 21, 1999. Consequently, the Chapter 13
23 trustee did not serve Homecomings with the notice of Debtor's
24 section 341 meeting and of the claims bar date. The last day for
25 filing proofs of claim was June 1, 1999, and Homecomings did not
26 file a claim. Debtor now seeks to set a new deadline for
27 Homecomings. For the reasons discussed below, Debtor's
28 application is denied.

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2 Section 501 of the Bankruptcy Code governs the filing of
3 proofs of claim. Section 501 allows a creditor to file a timely
4 proof of claim, and allows a debtor or the trustee to file such a
5 proof of claim if the creditor fails to do so. Federal Rule of
6 Bankruptcy Procedure 3002(c) limits the time in which a creditor
7 may file a proof of claim in a Chapter 13 case. A claim must be
8 filed within 90 days after the first date set for the meeting of
9 the section 341 meeting of creditors. Bankruptcy Rule 3002(c)
10 also provides specific exceptions to this deadline for filing
11 claims. Debtor argues that one of these exceptions applies here.
12 Bankruptcy Rule 3002(c)(3) allows an unsecured creditor to file a
13 late claim if its claim arose or became allowable as a result of a
14 judgment "if the judgment is for the recovery of money or property
15 from that entity or denies or avoids the entity's interest in
16 property." In this case, Homecomings holds a junior lien on
17 Debtor's property; the senior creditor has obtained a judgment
18 allowing it to conduct a foreclosure sale on the property. This
19 judgment, however, does not deny or avoid Homecoming's interest in
20 the property, and is not for the recovery of money or property
21 from Homecomings. Therefore, the "judgment" exception of
22 Bankruptcy Rule 3002(c)(3) is inapplicable.

23 By way of supplemental argument, Debtor also contends that
24 the note and second deed of trust held by Homecomings somehow
25 constitute an executory contract which Debtor may reject, thus
26 triggering the extended claims filing deadline of Bankruptcy Rule
27 3002(c)(4). Not surprisingly, Debtor offers no authority for this
28 novel proposition. It is no more helpful than his first argument,

1 discussed above.

2 Because none of the exceptions of Bankruptcy Rule 3002 apply,
3 the original deadline for filing proofs of claim cannot be
4 extended.

5 Debtor has not cited any other authority which would permit
6 this court to disregard the language of Bankruptcy Rule 3002(c),
7 and, more particularly, Bankruptcy Rule 9006(b)(3). Bankruptcy
8 Rule 9006(b)(3) specifically limits the court's powers to grant
9 extensions for late claims to the enumerated exceptions under
10 Bankruptcy Rule 3002(c). Because none of these exceptions apply
11 here, the court is without power to waive the deadline for
12 Homecomings to file its claim. In re Wrobel, 197 B.R. 289, 294-95
13 (Bankr. N.D. Ill. 1996). See also Aboody v. United States (In re
14 Aboody), 223 B.R. 36, 39 (1st Cir. BAP 1998) (citing numerous
15 cases where courts have refused to allow late filing of proofs of
16 claim in Chapter 13 cases, even where "excusable neglect" exists).
17 As this court noted in In re Robert, 171 B.R. 881 (Bankr. N.D.
18 Cal. 1994): "Extensions of this [Rule 3002(c)] deadline may only
19 be obtained by filing a motion prior to the expiration time, and
20 for cause shown."

21 In light of the foregoing, it is hereby

22 ORDERED that Debtor's ex parte application for order
23 establishing claims bar date for omitted creditor Homecomings
24 Financial be, and hereby is, DENIED; and

25 FURTHER ORDERED, that nothing in this Order is intended to or
26 does constitute a determination as to whether Debtor's obligations
27 to Homecomings will or will not be discharged should he complete
28 payments under his Chapter 13 Plan and be entitled to a discharge

1 under 11 U.S.C. §1328.

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3 Dated: November 17, 1999

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Dennis Montali
United States Bankruptcy Judge

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